

Pat O'Leary  
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CONSTITUTION  
of the  
STATE OF INDIANA  
and of the  
UNITED STATES

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## PREFACE

The following quotation taken from the introduction to the 1913 issue of this pamphlet is self-explanatory:

"This bulletin containing the Constitution of the United States and of the State of Indiana, with brief explanations and annotations of decisions and authorities, is issued primarily for popular study.

"No law can be passed or other act of government done which does not conform to the provisions of both federal and state constitutions. It is highly important therefore that the citizens of the State who are interested in good government should study the constitutions in order to know the fundamental structure of government; to see the limitations which the constitutions fix; and to be able to discover the powers granted as well as the limitations fixed."

In the preparation of that part of this pamphlet which embraces the federal Constitution, the 1952 edition of THE CONSTITUTION OF THE UNITED STATES OF AMERICA, prepared by the Legislative Reference Service, Library of Congress, was used extensively.

SAMUEL T. LESH, Acting Director.

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## PROPOSED AMENDMENTS

Article 16 of the Constitution governs the procedure necessary in order for amendments to become a part of the Constitution. The first three paragraphs of the notes to Article 16, section 1, set forth the method of ascertaining the majority vote necessary for ratification of proposed amendments submitted to the electors before 1932, as distinguished from amendments submitted in 1932 and thereafter. The rule now is that if a proposed amendment is submitted to the voters and if more votes are cast in favor of, than in opposition to, the amendment is ratified even though the total vote cast in favor of the amendment is less than a majority of the total number of votes cast at the election.

Two amendments to the Constitution of the State of Indiana were proposed and agreed to by the 1953 Session of the General Assembly, and referred to the 1955 General Assembly for reconsideration and agreement. They are as follows:

### I. CHANGE OF VOTING AGE

Section 2 of Article 2 of the Constitution of the State of Indiana is amended to read as follows: Sec. 2. In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of nineteen years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.

### II. PROVISION FOR CITY AND TOWN CHARTERS

That the Constitution of the State of Indiana be amended by adding thereto an Article 17 to read as follows:

Article 17. Section 1. Any incorporated city or town may frame and adopt a charter for its own civil government, or reframe an existing charter adopted pursuant to this article, in the following manner: The common council or other legislative authority of the city or town, by a two-thirds vote of its members, may and, upon written petition of qualified electors within such city or town equal in number to at least ten per cent of the total votes cast therein at the last preceding general election for Secretary of State in cities and for Clerk-Treasurer in towns, shall provide by ordinance for the submission to the qualified electors of such city or town of the question "Shall a commission be chosen to frame a charter for the City (or Town) of .....?" Such ordinance shall require the submission at the next general election, if one shall occur not less than sixty nor more than one hundred and twenty days after its passage, otherwise at a special election to be called and held within the time aforesaid and on a day named in such ordinance.

The proposed charter commission shall consist of eleven members, each of whom shall be a qualified elector of such city or town, and they shall be chosen by the qualified electors within such city or town at the same time as the submission of the question. Candidates therefor shall be nominated by written petition signed by qualified electors within such city or town equal in number to at least one-half of one per cent of the total votes cast therein at the last preceding general election for Secretary of State in cities and for Clerk-Treasurer in towns, but the signatures of more than one thousand qualified electors shall not be required for the nomination of any candidate. Such nominating petition or petitions shall be filed with the clerk of the city or town at least thirty days prior to the date set for the submission of the question. Candidates for the proposed charter commission may also be nominated in the original petition for submission of the question.

The ballot shall contain the question and the names of the candidates for members of the proposed charter commission, but without party designation. Each elector shall have the privilege of voting for eleven candidates. If a majority of the qualified electors voting on the question of choosing a commission shall vote in the affirmative, then the eleven candidates receiving the highest number of votes cast at such election shall constitute the charter commission, and shall proceed to frame a charter. If a charter has not been framed within one year from the date of the election, the commission may be automatically discharged and a new commission may be chosen in the manner hereinabove prescribed. The commission shall act at all times by majority vote of its members.

The charter so framed shall be submitted to the qualified electors of the city or town at an election to be held at a time determined by the charter commission. Alternative charter provisions may also be framed by the commission and submitted to be voted on separately, but at the same election. The proposed charter and alternative charter provisions, bearing the written approval of a majority of the members of the commission, shall be deposited with the clerk of the city or town, who shall cause such charter and notice of such election to be published once a week for four weeks in one or more newspapers of general circulation in such city or town. Such proposed charter and such alternative charter provisions as are approved by a majority of the electors voting thereon, shall become the charter of such city or town at such time as may be fixed therein, and shall supersede all laws affecting the organization and civil government of such city or town which may be in conflict therewith. Within ten days after such approval a copy of such charter as adopted, certified by the presiding officer of the common council or other legislative authority and authenticated by the seal of such city or town, shall be made in triplicate and deposited, one in the office of the Secretary of State, one in the office of the recorder of the county in which the city or town is located, and one in the official records of the city or town.

Amendments to any charter so adopted may be proposed by the common council or other legislative authority of the city or town upon a two-thirds vote thereof, or by written petition of qualified electors of

the city or town equal in number of ten per cent of the total votes cast within the city or town at the last preceding general election for Secretary of State in cities and for Clerk-Treasurer in towns. Any such amendment shall be submitted at the next general election, if one shall occur not less than sixty nor more than one hundred and twenty days after its proposal in either of the two methods herein prescribed; otherwise, at a special election to be called and held within the time aforesaid. Prior to such election the clerk of such city or town shall cause the proposed amendments or amendments to be published as in the case of original charters. If any such amendments be approved by a majority of the electors voting thereon, the same shall become part of the charter at the time fixed in such amendment, and the clerk of the city or town shall cause the same to be certified and filed as in the case of original charters.

The general election laws of the state then in force shall govern the elections herein provided for to the extent such laws are applicable. If conflicting charter provisions are approved by a majority of the electors at the same election the provision receiving the largest affirmative vote shall prevail to the extent of the conflict.

Section 2. The common council or other legislative authority of such city or town shall provide and appropriate an amount necessary for the reasonable expenses of the commission and for holding elections as provided in this article; and may borrow funds for such purposes.

Section 3. Any city or town forming its charter under this constitution shall have and is hereby granted the authority to exercise the following powers relative to its local affairs:

1. To prescribe its own form of civil government. Where a state law places a duty or responsibility upon cities or towns, a charter city or town shall either by the terms of its charter or in a manner prescribed by the charter, determine which city or town official shall exercise that duty or responsibility.

2. To adopt by terms of its charter methods for the nomination and election and recall of its elective officers, provided that the secrecy of the ballot is maintained.

3. To create, abolish or combine departments, divisions, bureaus, sections, commissions, boards, or agencies to carry out the functions of local civil government.

4. To provide for the selection, compensation, hours of work and dismissal of all its officers and employees, and terms of office of elected officials.

5. To administer any special districts already created or hereafter created if more than half the area of such districts lie within such city or town, except that this clause shall not apply to districts heretofore created for the purpose of operating public utilities unless the General Assembly directs otherwise by law.

Section 4. All powers of local civil government except those specified as numbers 1, 2, 3, 4, and 5 of Section 3 shall be subject to general laws. But no law shall be enacted which has the effect of withholding powers from, or restricting the powers of, a charter city or town unless all cities or towns of the state are likewise limited or restricted.

Section 5. All laws relating to cities and towns not inconsistent with this constitution shall remain in force until they shall expire or until they shall be repealed or until they are superseded, in so far as they are within the specific powers granted to chartered cities or towns, by provisions of the charter or by legislative action of such cities or towns.



# CONSTITUTION OF THE STATE OF INDIANA

1851\*

## PREAMBLE

To the end, that justice be established, public order maintained, and liberty perpetuated: We, the People of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

## ARTICLE 1. BILL OF RIGHTS

**Section 1. Equality of Man.**—We declare, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that all power is inherent in the People; and that all free governments are, and of right ought to be, founded on their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the People have, at all times, an indefeasible right to alter and reform their government.

The state may enact regulatory legislation to protect the public health, morals, safety or welfare in the exercise of its police power, but if the law prohibits that to be done which does not tend to promote the health, comfort, morality, safety or welfare of society, it will be an unauthorized exercise of power, and upon proper presentation it is the duty of the courts to declare such a law void. *Kirtley v. State*, 227 Ind. 175.

**Sec. 2. Right to worship.**—All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

**Sec. 3. Freedom of religion.**—No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

**Sec. 4. Creedal preference.**—No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

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\* The Constitution of Indiana was drafted by a convention which assembled at Indianapolis on October 7, 1850, and adjourned on February 10, 1851. The electors were afforded the opportunity of voting on the ratification or rejection of the Constitution as a whole and on Article 13 relative to Negroes and Mulattoes. At the election held on August 4, 1851, the Constitution as a whole was ratified by a vote of 113,230 to 27,638, and Article 13 was ratified by a vote of 113,828 to 21,873. The Constitution became effective November 1, 1851.

**Sec. 5. Religious test for office.**—No religious test shall be required, as a qualification for any office of trust or profit.

**Sec. 6. No state aid for religious institutions.**—No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

**Sec. 7. Religion no bar to competency of witnesses.**—No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

**Sec. 8. Mode of oath administration.**—The mode of administering an oath or affirmation, shall be such as may be most consistent with, and binding upon, the conscience of the person, to whom such oath or affirmation may be administered.

**Sec. 9. Freedom of speech.**—No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever; but for the abuse of that right, every person shall be responsible.

**Sec. 10. Libel.**—In all prosecutions for libel, the truth of the matters alleged to be libelous may be given in justification.

**Sec. 11. Searches or seizures.**—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

An affidavit upon information and belief, and containing only affiant's conclusion upon probable cause, is not of itself sufficient basis for a search warrant. The search warrant and the statements upon which probable cause is based must comply strictly with the Constitution and statutory law which permits a search and seizure. *Rohlfing v. State*, 227 Ind. 619.

**Sec. 12. Courts—Justice administration.**—All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily without delay.

**Sec. 13. Rights of accused.**—In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witness face to face, and to have compulsory process for obtaining witnesses in his favor.

A defendant may waive the rights provided for by this section. *Lucas v. State*, 227 Ind. 486.

**Sec. 14. Double jeopardy—Self-incrimination.**—No person shall be put in jeopardy twice for the same offense. No person, in any criminal prosecution, shall be compelled to testify against himself.

**Sec. 15. Rights of persons arrested.**—No person arrested or confined in jail, shall be treated with unnecessary rigor.

**Sec. 16. Excessive bail—Fines.**—Excessive bail shall not be required. Excessive fines shall not be imposed. Cruel and unusual punishments shall not be inflicted. All penalties shall be proportioned to the nature of the offense.

**Sec. 17. Bailable offenses.**—Offenses, other than murder or treason, shall be bailable by sufficient sureties. Murder or treason shall not be bailable, when the proof is evident, or the presumption strong.

**Sec. 18. Penal code.**—The penal code shall be founded on the principles of reformation, and not of vindictive justice.

The punishment of death is not in conflict with this section. *Driskill v. State*, 7 Ind. 338; *Rice v. State*, 7 Ind. 332. The indeterminate sentence law is valid and is an attempt to carry out the mandate of this section. *Miller v. State*, 149 Ind. 607.

**Sec. 19. Criminal cases—Jury determination.**—In all criminal cases whatever, the jury shall have the right to determine the law and the facts.

**Sec. 20. Civil cases—Right of trial by jury.**—In all civil cases, the right of trial by jury shall remain inviolate.

The civil cases referred to in this section have reference only to those actions which were triable by jury at common law. *Warren v. Indiana Tel. Co.*, 217 Ind. 93; *State ex rel. Gannon v. Lake Circuit Court*, 223 Ind. 375. The phrase "shall remain inviolate" means "continue as it was at common law"; and a jury at common law consisted of twelve men. *Coca Cola Bottling Works v. Harvey*, 209 Ind. 262.

**Sec. 21. Compensation for services or property.**—No man's particular services shall be demanded, without just compensation. No man's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.

**Sec. 22. Debts—Imprisonment exemption.**—The privilege of the debtor to enjoy the necessary comforts of life, shall be recognized by wholesome laws, exempting a reasonable amount of property from seizure or sale, for the payment of any debt or liability hereafter contracted; and there shall be no imprisonment for debt, except in case of fraud.

If a debtor practices fraud to avoid payment of a debt, he may be imprisoned. *Baker v. State*, 109 Ind. 47. A judgment against a husband for failure to support his wife is not a debt within the meaning of this section. *Perry v. Pernet*, 165 Ind. 67.

**Sec. 23. Privileges and immunities.**—The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens.

The characteristics which can serve as the basis of a valid classification must be such as to show an inherent difference in situation and subject matter of the subjects placed in different classes which peculiarly requires and necessitates different or exclusive legislation with respect to them. *Fountain Park Co. v. Hensler*, 199 Ind. 95.

**Sec. 24. Ex post facto laws.**—No *ex post facto* law, or law impairing the obligation of contracts, shall ever be passed.

An *ex post facto* law is one which makes an act unlawful which was lawful when committed, or which adds to the punishment for an act, or which increases the malignity of the crime, or renders a conviction easier. *Strong v. State*, 1 Blkf. 193; *Dinckerlocker v. Marsh*, 75 Ind. 548; *Davis v. State*, 152



Ind. 34. The phrase *ex post facto* relates to criminal laws only. *Andrews v. Russell*, 7 Blkf. 474; *Pittsburgh Ry. Co. v. Lighthouse*, 168 Ind. 438.

The Legislature has authority to put an end to all proceedings at any stage thereof before final judgment, but it has no power to nullify final judgments of a court of competent jurisdiction nor does it have the power to impair the rights and obligations created and vested by a final judgment. *Heath v. Fenning*, 219 Ind. 629.

**Sec. 25. Laws—Taking effect.**—No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.

Laws cannot be made to take effect upon a submission to a vote of the people. *Malze v. State*, 4 Ind. 342. But laws may be enacted which provide for the petition or vote by a certain number before the benefit of the law can be invoked. *Thompson v. Peru*, 29 Ind. 305; *Lafayette R. R. Co. v. Geiger*, 34 Ind. 185; *Groesch v. State*, 42 Ind. 547. Laws may be passed conferring on state boards the authority to issue rules which have the force of law. *Isenhour v. State*, 157 Ind. 517.

**Sec. 26. Suspension of laws.**—The operation of the laws shall never be suspended, except by the authority of the General Assembly.

**Sec. 27. Habeas corpus.**—The privilege of the writ of *habeas corpus* shall not be suspended, except in case of rebellion or invasion; and then, only if the public safety demand it.

The right of a writ of *habeas corpus* is a part of the law of the land and has been a part of the law of this jurisdiction since the Ordinance of 1787. It is a common law right made a constitutional right, and thus beyond the power of the Legislature to impair. *Witte v. Dowd, Warden*, 230 Ind. 485.

**Sec. 28. Treason defined.**—Treason against the State shall consist only in levying war against it, and in giving aid and comfort to its enemies.

**Sec. 29. Proof in treason.**—No person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or upon his confession in open court.

**Sec. 30. Effect of conviction.**—No conviction shall work corruption of blood, or forfeiture of estate.

**Sec. 31. Right of assemblage.**—No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good; nor from instructing their representatives; nor from applying to the General Assembly for redress of grievances.

**Sec. 32. Arms—Right to bear.**—The people shall have a right to bear arms, for the defense of themselves and the State.

Laws prohibiting the carrying of concealed weapons do not violate the provisions of this section giving the people the right to bear arms. *McIntyre v. State*, 170 Ind. 163.

**Sec. 33. Military.**—The military shall be kept in strict subordination to the civil power.

**Sec. 34. Soldiers—Restriction.**—No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.



**Sec. 35. Titles of nobility.**—The General Assembly shall not grant any title of nobility, nor confer hereditary distinctions.

**Sec. 36. Emigration.**—Emigration from the State shall not be prohibited.

**Sec. 37. Slavery—Prohibition.**—There shall be neither slavery, nor involuntary servitude, within the State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. No indenture of any Negro or Mulatto, made and executed out of the bounds of the State, shall be valid within the state.

For all practical purposes, this section is now obsolete.

## ARTICLE 2. SUFFRAGE AND ELECTION

**Section 1. Elections.**—All elections shall be free and equal.

Elections are "free" when the voters are subject to no intimidation or improper influence, and when every voter is allowed to cast his ballot as his own judgment and conscience dictate; and they are "equal" when the vote of every elector is equal in its influence upon the result to the vote of every other voter and when each ballot is as effective as any other ballot. *Blue v. State, ex rel. Brown, 206 Ind. 98.*

**Sec. 2. Qualifications of electors.**—In all elections not otherwise provided for by this Constitution, every citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in the State during the six months, and in the township sixty days, and in the ward or precinct thirty days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside.

The present amendment to this section was submitted to a vote of the people at a special election held on September 6, 1921. There were 218,696 votes cast at the election. 130,242 votes were cast in favor of the amendment and 80,574 votes were cast against it. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election. As originally adopted, this section restricted the right of suffrage to white male citizens and prescribed a residence qualification of one year in the United States and six months in the state. The amendment of 1881 struck out the word "white" and thus conferred the right of suffrage on male negro citizens and also prescribed a residence qualification of 60 days in a township and 30 days in a ward or precinct. It also authorized the General Assembly to require voters to register. The amendment of 1921 conferred full suffrage on women, restricted the right to vote to native born or fully naturalized citizens, and eliminated the provision relative to the registration of voters.

The General Assembly has no authority to change the qualifications of voters as fixed by the Constitution. *Morris v. Powell, 125 Ind. 281; State v. Shanks, 178 Ind. 330.* A primary election is not an "election" as contemplated in this section of the Constitution and accordingly additional qualifications for voters may be prescribed. *Kelso v. Cook, 184 Ind. 173.*

**Sec. 3. Armed forces.**—No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the State, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine, have the right to vote.

**Sec. 4. State residence.**—No person shall be deemed to have lost his residence in the State, by reason of his absence, either on business of this State or of the United States.

**Sec. 5. [Stricken out by constitutional amendment of March 24, 1881.]**

As adopted in 1851, Sec. 5 provided that "No Negro or Mulatto shall have the right of suffrage." The amendment which struck this section out of the Constitution was submitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election. 124,952 votes were cast in favor of the amendment and 42,896 votes were cast against it. The amendment was ratified, as it received a majority of the votes cast at the election.

**Sec. 6. Bribery.**—Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward, to procure his election.

**Sec. 7. Duels.**—Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge, or who shall agree to go out of the State to fight a duel, shall be ineligible to any office of trust or profit.

**Sec. 8. Disfranchisement.**—The General Assembly shall have power to deprive of the right of suffrage, and to render ineligible, any person convicted of an infamous crime.

**Sec. 9. Lucrative offices.**—No person holding a lucrative office or appointment under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution expressly permitted: *Provided*, That offices in the militia to which there is attached no annual salary, and the office of Deputy Postmaster where the compensation does not exceed ninety dollars per annum, shall not be deemed lucrative: *And provided, also*, That counties containing less than one thousand polls, may confer the office of Clerk, Recorder, and Auditor, or any two of said offices, upon the same person.

The following offices have been held to be lucrative: County recorder, county commissioner, Dailey v. State, 8 Blkf. 329; township trustee, road supervisor, Creighton v. Piper, 14 Ind. 182; Bishop v. State, 149 Ind. 223; colonel of volunteers, reporter of Supreme Court, Kerr v. Jones, 19 Ind. 351; mayors of cities, Howard v. Shoemaker, 35 Ind. 111; school trustees and trustees of the state benevolent institutions, Chambers v. State, 127 Ind. 365.

**Sec. 10. Accountability of defaulters.**—No person who may hereafter be a collector or holder of public moneys, shall be eligible to any office of trust or profit, until he shall have accounted for, and paid over, according to law, all sums for which he may be liable.

**Sec. 11. Pro tempore appointments.**—In all cases in which it is provided, that an office shall not be filled by the same person more than a certain number of years continuously, an appointment *pro tempore* shall not be reckoned a part of that term.

**Sec. 12. Freedom from arrest.**—In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest, in going to elections, during their attendance there, and in returning from the same.

**Sec. 13. Election methods.**—All elections by the People shall be by ballot; and all elections by the General Assembly, or by either branch thereof, shall be *viva voce*.

This section, requiring that all elections shall be by ballot, does not prevent the use of voting machines. *Spickerman v. Goddard*, 182 Ind. 523.

**Sec. 14. Time of elections—Registration.**—All general elections shall be held on the first Tuesday after the first Monday in November, but township elections may be held at such time as may be provided by law: *Provided*, That the General Assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction, by an election to be held for such officers only, at which time no other officer shall be voted for; and shall also provide for the registration of all persons entitled to vote.

As adopted in 1851, Sec. 14 provided that "All general elections shall be held on the second Tuesday in October." The present amendment was submitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election. 128,038 votes were cast in favor of the amendment and 40,163 votes were cast against it. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election.

### ARTICLE 3. DISTRIBUTION OF POWERS

**Section 1. Three departments.**—The powers of the Government are divided into three separate departments: The Legislative, the Executive including the Administrative, and the Judicial; and no person, charged with official duties under one of these departments, shall exercise any of the functions of another, except as in this Constitution expressly provided.

This is the famous "separation of powers" section of the Constitution. The three departments of government are equal, coordinate and independent. *Lafayette R. R. Co. v. Gelger*, 34 Ind. 185. One department of the government cannot inquire into the motives controlling another department. *Wright v. Defrees*, 8 Ind. 298; *McCulloch v. State*, 11 Ind. 424. The legislature alone has power to make, sanction, suspend or give effect to laws. *Maize v. State*, 4 Ind. 342. The construction of statutes is a judicial power and cannot be exercised by the legislature. *Guckien v. Rothrock*, 137 Ind. 355. The Governor cannot be compelled by mandate to perform an official duty. *Hovey v. State*, 127 Ind. 588.

The respective powers granted and restrictions imposed upon officers within the legislative, the executive including the administrative, and the judicial departments are discussed at great length in *Tucker v. State*, 218 Ind. 614. This section relates solely to the state government and state officers and their duties under one of the separate departments of state. *State ex rel. Buttz v. Marion Circuit Court*, 225 Ind. 7.

### ARTICLE 4. LEGISLATIVE

**Section 1. General Assembly.**—The Legislative authority of the State shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives. The style of every law shall be: "Be it enacted by the General Assembly of the State of Indiana"; and no law shall be enacted, except by bill.

The legislative authority of the General Assembly is supreme and sovereign, subject only to the restraints imposed thereon by the State and Federal Constitutions and laws and treaties passed and made in pursuance thereof. *Lafayette R. R. Co. v. Gelger*, 34 Ind. 185; *Hanly v. Sims*, 175 Ind. 345; *Carr v. State*, 175 Ind. 241. Laws must be enacted by bill and the style must be: "Be it enacted by the General Assembly of the State of Indiana."



Money cannot be appropriated from the state treasury by a joint resolution, but the legislative will may in some cases be expressed by a joint resolution. *May v. Rice*, 91 Ind. 546; *State v. Bailey*, 16 Ind. 46.

Although a law as enacted must be complete, the legislature may lay down a standard which authorizes an administrative agency to amplify that legislation within prescribed limits, but the legislature cannot confer upon anybody or person the power to determine what the law shall be. *State ex rel. Standard Oil Co. v. Review Board*, 230 Ind. 1.

**Sec. 2. Number of members.**—The Senate shall not exceed fifty, nor the House of Representatives one hundred members; and they shall be chosen by the electors of the respective counties or districts, into which the State may, from time to time, be divided.

In 1851 the number of senators was fixed at 50 and the number of representatives at 100 and the number has been continued on that basis ever since.

**Sec. 3. Term of office.**—Senators shall be elected for the term of four years, and Representatives for the term of two years, from the day next after their general election; *Provided, however*, that the Senators elect, at the second meeting of the General Assembly under this Constitution, shall be divided, by lot, into two equal classes, as nearly as may be; and the seats of Senators of the first class shall be vacated at the expiration of two years, and those of the second class, at the expiration of four years; so that one-half, as nearly as possible, shall be chosen biennially forever thereafter. And in case of increase in the number of Senators, they shall be so annexed, by lot, to one or the other of the two classes, as to keep them as nearly equal as practicable.

**Sec. 4. Enumeration.**—The General Assembly shall, at its second session after the adoption of this Constitution, and every sixth year thereafter, cause an enumeration to be made of all male inhabitants over the age of twenty-one years.

As adopted in 1851, Sec. 4 and Sec. 5 provided for enumeration and apportionment on the basis of the number of white male voters. The amendment which struck out the word "white" was submitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election. 125,170 votes were cast in favor of the amendment and 42,162 votes were cast against it. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election.

The last enumeration of voters was made in 1931 and disclosed that there were 865,001 white male voters and 25,892 colored male voters in the state. On the basis of the enumeration so made, the state should have been reapportioned by the Legislature of 1933.

It is the duty of the court to decide whether an apportionment act complies with the requirements of the Constitution. The legislature can enact only one apportionment under each enumeration, but if the law is held invalid, a valid apportionment law may be enacted. *Parker v. State*, 133 Ind. 178; *Denney v. State*, 144 Ind. 503.

**Sec. 5. Apportionment.**—The number of Senators and Representatives shall, at the session next following each period of making such enumeration, be fixed by law, and apportioned among the several counties, according to the number of male inhabitants, above twenty-one years of age, in each: *Provided*, That the first and second elections of members of the General Assembly, under this Constitution, shall be according to the



apportionment last made by the General Assembly, before the adoption of this Constitution.

**Sec. 6. Districts.**—A Senatorial or Representative district, where more than one county shall constitute a district, shall be composed of contiguous counties; and no county, for Senatorial apportionment, shall ever be divided.

**Sec. 7. Qualifications.**—No person shall be a Senator or a Representative, who, at the time of his election, is not a citizen of the United States; nor any one who has not been for two years next preceding his election, an inhabitant of this State, and, for one year next preceding his election, an inhabitant of the county or district, whence he may be chosen. Senators shall be at least twenty-five, and Representatives at least twenty-one years of age.

**Sec. 8. Privileges.**—Senators and Representatives, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest, during the session of the General Assembly, and in going to and returning from the same; and shall not be subject to any civil process, during the session of the General Assembly, nor during the fifteen days next before the commencement thereof. For any speech or debate in either House, a member shall not be questioned in any other place.

**Sec. 9. Sessions.**—The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session.

The legislative power of the General Assembly convened in special session is as unlimited as during a regular session. *Woessner v. Bullock*, 176 Ind. 166.

**Sec. 10. Organization and procedure.**—Each House, when assembled, shall choose its own officers, the President of the Senate excepted; judge the elections, qualifications, and returns of its own members; determine its rules of proceeding, and sit upon its own adjournment. But neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which it may be sitting.

The officers of the Senate, in addition to the Lieutenant Governor, who is ex officio President of the Senate, are a President Pro Tem., Principal Secretary and Principal Doorkeeper. The officers of the House are a Speaker, Chief Clerk, Assistant Clerk and Doorkeeper. The rules of the House and Senate are very elaborate and are printed separately during each session of the legislature.

**Sec. 11. Quorum.**—Two thirds of each House shall constitute a quorum to do business; but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members. A quorum being in attendance, if either House fail to effect an organization within the first five days thereafter, the members of the House so failing, shall be entitled to

no compensation, from the end of the said five days, until an organization shall have been effected.

A quorum of the House is 67 members and a quorum of the Senate is 34 members.

**Sec. 12. Journals.**—Each House shall keep a journal of its proceedings, and publish the same. The yeas and nays, on any question, shall, at the request of any two members, be entered, together with the names of the members demanding the same, on the journal; *Provided*, That on a motion to adjourn, it shall require one-tenth of the members present to order the yeas and nays.

**Sec. 13. Public sessions.**—The doors of each House, and of Committees of the Whole, shall be kept open, except in such cases, as, in the opinion of either House, may require secrecy.

**Sec. 14. Punishment.**—Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.

**Sec. 15. Contempt.**—Either House, during its session, may punish, by imprisonment, any person not a member, who shall have been guilty of disrespect to the House, by disorderly or contemptuous behavior, in its presence; but such imprisonment shall not, in any one time, exceed twenty-four hours.

**Sec. 16. General powers.**—Each house shall have all powers necessary for a branch of the Legislative department of a free and independent State.

**Sec. 17. Origin of bills.**—Bills may originate in either House, but may be amended or rejected in the other; except that bills for raising revenue shall originate in the House of Representatives.

All tax bills originate in the House. The term "for raising revenue" is confined to bills to levy taxes in the strict sense of the word and does not apply for other purposes which may incidentally create revenue. *Stith Petroleum Co. v. Dept. of Audit and Control*, 211 Ind. 400.

**Sec. 18. Reading of bills.**—Every bill shall be read, by sections, on three several days, in each House; unless, in case of emergency, two-thirds of the House where such bill may be pending, shall, by a vote of yeas and nays, deem it expedient to dispense with this rule; but the reading of a bill, by sections, on its final passage, shall, in no case, be dispensed with; and the vote on the passage of every bill or joint resolution shall be taken by yeas and nays.

If a law is signed by the presiding officers of the two Houses, the courts will not inquire whether it was properly passed. *Evans v. Browne*, 30 Ind. 514; *Bender v. State*, 53 Ind. 254; *Western Union Co. v. Taggart*, 141 Ind. 281.

**Sec. 19. Subject-matter of bills.**—Every act shall embrace but one subject and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Every act must have a title and designate a single subject, but the title should not express the object or purpose of the act, but the means by which it is to be accomplished. *Indiana Ry. Co. v. Potts*, 7 Ind. 681. The term "subject" means the thing about which the legislation is had and the term "matters" refers to the incidents or secondary things necessary to provide for the enforcement of the act. *Board of Comrs. v. Scanlan*, 178 Ind. 142.

The purpose of this section is to prevent surprise or fraud by inclusion in the body of the act matter of which the title gives no indication, and to apprise the members of the law-making body and the public of the subject of legislation under consideration, and the title of an act sufficiently expresses the subject if it gives such notice as to reasonably lead interested persons to inquire into the body of the act. *Draper v. Zebec*, 219 Ind. 362.

**Sec. 20. Wording.**—Every act and joint resolution shall be plainly worded, avoiding as far as practicable, the use of technical terms.

An act which prohibited the operation of trains over railroads not equipped with and having in operation an approved block system and which failed to specify the block system required was declared invalid for uncertainty and indefiniteness. *Railroad Com., etc. v. Grand Trunk, etc., R. Co.*, 179 Ind. 255.

**Sec. 21. Amendment.**—No act shall ever be revised or amended by mere reference to its title; but the act revised, or section amended, shall be set forth and published at full length.

In amending a statute, the title of the act to be amended should be referred to by setting it out in the title of the amendatory act and the section as amended should be set forth and published at full length. *Mankin v. Penn. Co.*, 160 Ind. 447; *Hendershot v. State*, 162 Ind. 69. In the amendment of an act, the old act or section need not be set out, but the act or section as amended should be set forth. *Greencastle Co. v. State*, 28 Ind. 382; *Draper v. Falley*, 33 Ind. 465.

**Sec. 22. Local and special laws.**—The General Assembly shall not pass local or special laws, in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of Justices of the Peace and of Constables;

For the punishment of crimes and misdemeanors;

Regulating the practice in courts of justice;

Providing for changing the venue in civil and criminal cases;

Granting divorces;

Changing the names of persons;

For laying out, opening and working on highways, and for the election or appointment of supervisors;

Vacating roads, town plats, streets, alleys and public squares;

Summoning and empaneling grand and petit juries, and providing for their compensation;

Regulating county and township business;

Regulating the election of county and township officers and their compensation;

For the assessment and collection of taxes for State, county, township or road purposes;

Providing for supporting common schools, and for the preservation of school funds;



In relation to fees or salaries: except that the laws may be so made as to grade the compensation of officers in proportion to the population and the necessary services required;

As adopted in 1851, this clause prohibited the passage of local and special laws in relation to fees and salaries. The present amendment which provides that the salaries of public officials may be graded according to population and the necessary services required was submitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election. 128,731 votes were cast in favor of the amendment and 38,345 votes were cast against it. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election.

Acts creating inferior courts are not invalid as being local or special. *Woods v. McCay*, 144 Ind. 316; *Dearbeyne v. Greenwald*, 186 Ind. 321; *Stocking v. State*, 7 Ind. 326; *Eitel v. State*, 33 Ind. 201.

Acts may be passed providing for the classification of cities if they are so worded that any city on attaining the requisite population will come under the law. *Bumb v. City of Evansville*, 168 Ind. 272.

In relation to interest on money;

Providing for opening and conducting elections of State, county, or township officers, and designating the places of voting;

Providing for the sale of real estate belonging to minors or other persons laboring under legal disabilities, by executors, administrators, guardians, or trustees.

**Sec. 23. Generality of laws.**—In all the cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.

Under the former decisions of the Supreme Court, it was held that the legislature alone has authority to determine whether a law can be made general or whether a local law is necessary. *Gentile v. State*, 29 Ind. 409; *Wiley v. Bluffton*, 111 Ind. 152; *State v. Kolsem*, 130 Ind. 434; *Smith v. Indpls. St. Ry. Co.*, 158 Ind. 425; *School City of Marion v. Forrest*, 168 Ind. 94; *Crist v. Molony*, 187 Ind. 614. More recently, however, the Supreme Court has held that the question whether a general law can be made applicable is subject to judicial review. *Heckler v. Conter*, 206 Ind. 376.

**Sec. 24. Suits against state.**—Provision may be made, by general law, for bringing suit against the State, as to all liabilities originating after the adoption of this Constitution; but no special act authorizing such suit to be brought, or making compensation to any person claiming damages against the State, shall ever be passed.

Suits against the state are authorized by the act of 1889 and are brought in the Superior Court of Marion County and the issue is tried by all the judges sitting together without a jury.

**Sec. 25. Passage of bills.**—A majority of all the members elected to each House, shall be necessary to pass every bill or joint resolution; and all bills and joint resolutions so passed, shall be signed by the Presiding Officers of the respective Houses.

It requires 51 votes in the House and 26 votes in the Senate to pass a bill. The Speaker of the House signs a bill first, the President of the Senate second, and the Governor last.

**Sec. 26. Protests.**—Any member of either House shall have the right



to protest, and to have his protest, with his reasons for dissent, entered on the journal.

**Sec. 27. Public laws.**—Every statute shall be a public law, unless otherwise declared in the statute itself.

**Sec. 28. Date acts take effect.**—No act shall take effect, until the same shall have been published and circulated in the several counties of the State, by authority, except in case of emergency; which emergency shall be declared in the preamble, or in the body, of the law.

Acts which have an emergency clause become effective as soon as they are signed by the Governor. Acts which do not contain an emergency clause become effective when they are distributed to every county in the state and when the Governor has issued his proclamation. *Mark v. State*, 15 Ind. 98; *Cain v. Goda*, 84 Ind. 209; *Jones v. Cavins*, 4 Ind. 305; *State v. Indiana Board*, 155 Ind. 414; *Sudbury v. Board*, 157 Ind. 446; *State v. Williams*, 173 Ind. 414.

**Sec. 29. Pay and sessions.**—The members of the General Assembly shall receive for their services, a compensation to be fixed by law; but no increase of compensation shall take effect during the session at which such increase may be made. No session of the General Assembly, except the first under this Constitution, shall extend beyond the term of sixty-one days, nor any special session beyond the term of forty days.

The members of the General Assembly receive \$1,200 annually and 20 cents per mile for a round trip to the seat of government from their homes. The annual salary is paid as follows. In odd-numbered years, \$600 on January 15 and \$600 on February 15; in even-numbered years, \$300 on the 15th of January, April, July, and October.

The term of 61 days for a regular session and 40 days for a special session includes all Sundays and holidays intervening.

**Sec. 30. Eligibility to office.**—No Senator or Representative shall, during the term for which he may have been elected, be eligible to any office, the election to which is vested in the General Assembly; nor shall he be appointed to any civil office of profit, which shall have been created, or the emoluments of which shall have been increased, during such term; but this latter provision shall not be construed to apply to any office elective by the people.

## ARTICLE 5. EXECUTIVE

**Section 1. Governor.**—The executive power of the State shall be vested in a Governor. He shall hold his office during four years, and shall not be eligible more than four years, in any period of eight years.

**Sec. 2. Lieutenant governor.**—There shall be a Lieutenant Governor, who shall hold his office during four years.

**Sec. 3. Election.**—The Governor and Lieutenant Governor shall be elected at the times and places of choosing members of the General Assembly.

**Sec. 4. Vote.**—In voting for Governor and Lieutenant Governor, the electors shall designate, for whom they vote as Governor, and for whom

as Lieutenant Governor. The returns of every election for Governor and Lieutenant Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly.

**Sec. 5. Determination of election.**—The persons, respectively, having the highest number of votes for Governor and Lieutenant Governor, shall be elected; but in case two or more persons shall have an equal and the highest number of votes for either office, the General Assembly shall, by joint vote, forthwith proceed to elect one of the said persons Governor or Lieutenant Governor, as the case may be.

**Sec. 6. Contest of election.**—Contested elections for Governor or Lieutenant Governor, shall be determined by the General Assembly, in such manner as may be prescribed by law.

**Sec. 7. Eligibility.**—No person shall be eligible to the office of Governor or Lieutenant Governor who shall not have been five years a citizen of the United States and also a resident of the State of Indiana during the five years next preceding his election; nor shall any person be eligible to either of the said offices who shall not have attained the age of thirty years.

**Sec. 8. Ineligibility.**—No member of Congress or person holding any office under the United States or under this State shall fill the office of Governor or Lieutenant Governor.

**Sec. 9. Term of office.**—The official term of the Governor and Lieutenant Governor shall commence on the second Monday of January in the year one thousand eight hundred and fifty-three; and on the same day every fourth year thereafter.

**Sec. 10. Vacancies.**—In case of the removal of the Governor from office or of his death, resignation, or inability to discharge the duties of the office, the same shall devolve on the Lieutenant Governor; and the General Assembly shall, by law, provide for the case of removal from office, death, resignation, or inability, both of the Governor and Lieutenant Governor, declaring what officer shall then act as Governor; and such officer shall act accordingly, until the disability be removed or a Governor be elected.

In case of the removal, death, resignation or inability of both the Governor and Lieutenant Governor, the President of the Senate acts as Governor until the vacancy is filled.

**Sec. 11. President pro tempore.**—Whenever the Lieutenant Governor shall act as Governor, or shall be unable to attend as President of the Senate, the Senate shall elect one of its own members as President for the occasion.

**Sec. 12. Commander-in-chief.**—The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion.

**Sec. 13. Recommendations.**—He shall, from time to time, give to the

General Assembly information touching the condition of the State, and recommend such measures as he shall judge to be expedient.

This is known as the Governor's message. The regular message is read to the two houses of the General Assembly, convened in joint session, shortly after the convening of any regular or special session, but special messages may be submitted at any time.

**Sec. 14. Action on bills.**—Every bill which shall have passed the General Assembly, shall be presented to the Governor; if he approves, he shall sign it; but if not, he shall return it, with his objections, to the House in which it shall have originated; which House shall enter the objections, at large, upon its journals, and proceed to reconsider the bill. If, after such reconsideration, a majority of all the members elected to that House shall agree to pass the bill, it shall be sent, with the Governor's objections, to the other House, by which it shall likewise be reconsidered; and, if approved by a majority of all the members elected to that House, it shall be a law. If any bill shall not be returned by the Governor within three days, Sundays excepted, after it shall have been presented to him, it shall be a law, without his signature, unless the general adjournment shall prevent its return; in which case it shall be a law, unless the Governor, within five days next after such adjournment, shall file such bill, with his objections thereto, in the office of Secretary of State; who shall lay the same before the General Assembly at its next session, in like manner as if it had been returned by the Governor. But no bill shall be presented to the Governor within two days next previous to the final adjournment of the General Assembly.

If a bill is passed over the veto of the Governor, it need not be again presented to him. *State v. Denny*, 118 Ind. 449. If a bill is presented to the Governor within the two days prior to adjournment and the Governor vetoes it within the five days after adjournment of the legislature, the bill must be presented to the next regular or special session of the legislature held thereafter. *Woessner v. Bullock*, 176 Ind. 166. When the Governor has filed a bill in the office of the Secretary of State, he cannot afterwards withdraw or file objection to the bill. *Tarleton v. Peggs*, 18 Ind. 24. If a bill contains an emergency clause and is not approved by the Governor, it will become a law on the expiration of the time given by the Constitution for the Governor to veto it. *State v. Wheeler*, 172 Ind. 578; *Shutt v. State*, 173 Ind. 689; *Stalcup v. Dixon*, 136 Ind. 9. The two days within which bills cannot be presented to the Governor include Sunday. *State v. Grant Superior Court*, 202 Ind. 197.

**Sec. 15. Transaction of business.**—The Governor shall transact all necessary business with the officers of government, and may require information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

**Sec. 16. Execution of laws.**—He shall take care that the laws be faithfully executed.

**Sec. 17. Reprieves—Commutations—Pardons.**—He shall have the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment, subject to such regulations as may be provided by law. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the General Assembly, at its next meeting; when



the General Assembly shall either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall have power to remit fines and forfeitures, under such regulations as may be prescribed by law; and shall report to the General Assembly, at its next meeting, each case of reprieve, commutation, or pardon granted, and also the names of all persons in whose favor remission of fines and forfeitures shall have been made, and the several amounts remitted: *Provided, however,* That the General Assembly may, by law, constitute a council to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons, in any case, except such as may, by law, be left to his sole power.

The commission on clemency, created in 1933, reviewed all pardon cases and recommended its conclusions to the Governor. The 1953 Acts, Chapter 266, transferred the powers and duties of this commission to the department of correction. The Governor has exclusive power, under the rules prescribed by law, to grant reprieves, commutations and pardons, and to remit fines and forfeitures. *Butler v. State*, 97 Ind. 373. The power given to certain officers under the indeterminate sentence law to shorten the time of service of prisoners is not an exercise of the pardoning power. *Miller v. State*, 149 Ind. 607. Conditional pardons or paroles may be granted and the prisoner may be recommitted for a violation of the condition. *Woodward v. Murdock*, 124 Ind. 439.

**Sec. 18. Vacancies in office.**—When, during a recess of the General Assembly, a vacancy shall happen in any office, the appointment to which is vested in the General Assembly; or when, at any time, a vacancy shall have occurred in any other State office, or in the office of Judge of any court; the Governor shall fill such vacancy, by appointment, which shall expire, when a successor shall have been elected and qualified.

**Sec. 19. Vacancies in office.**—He shall issue writs of election to fill such vacancies as may have occurred in the General Assembly.

**Sec. 20. Meeting place of General Assembly.**—Should the seat of government become dangerous from disease or a common enemy, he may convene the General Assembly at any other place.

**Sec. 21. Rights and duties of Lieutenant Governor.**—The Lieutenant Governor shall, by virtue of his office, be President of the Senate; have a right, when in committee of the whole, to join in debate, and to vote on all subjects; and, whenever the Senate shall be equally divided, he shall give the casting vote.

**Sec. 22. Pay of Governor.**—The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished, during the term for which he shall have been elected.

The salary of the Governor is \$15,000 per year.

**Sec. 23. Pay of Lieutenant Governor.**—The Lieutenant Governor, while he shall act as President of the Senate, shall receive, for his services, the same compensation as the Speaker of the House of Representatives; and any person, acting as Governor, shall receive the compensation attached to the office of Governor.

The salary of the Lieutenant Governor is \$11,500 per year. In addition to this salary, he receives as President of the Senate \$1,200 per year, plus \$5.00 per day during the continuance of a legislative session.



**Sec. 24. Ineligibility to other office.**—Neither the Governor nor Lieutenant Governor shall be eligible to any other office, during the term for which he shall have been elected.

## ARTICLE 6. ADMINISTRATIVE

**Section 1. State officers.**—There shall be elected, by the voters of the State, a Secretary, an Auditor and a Treasurer of State, who shall, severally, hold their offices for two years. They shall perform such duties as may be enjoined by law; and no person shall be eligible to either of said offices, more than four years in any period of six years.

**Sec. 2. County officers.**—There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor, Recorder, Treasurer, Coroner and Surveyor shall continue in office four years; and no person shall be eligible to the office of Clerk, Auditor, Recorder, Treasurer, or Coroner more than eight years in any period of twelve years: Provided, That the Treasurer of each county re-elected at the general election in 1952 shall continue in office until January 1, 1957 and shall not be eligible for re-election to the office of County Treasurer at the general election in 1956.

As adopted in 1851, Sec. 2 provided that "There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner, and Surveyor. The Clerk, Auditor and Recorder, shall continue in office four years; and no person shall be eligible to the office of Clerk, Recorder, or Auditor more than eight years in any period of twelve years. The Treasurer, Sheriff, Coroner, and Surveyor, shall continue in office two years; and no person shall be eligible to the office of Treasurer or Sheriff, more than four years in any period of six years."

The present amendment was submitted to the voters at the general election held on November 4, 1952. According to the Secretary of State's General Election Report 1,817,502 votes were cast at the election. 289,673 votes were cast in favor of the amendment and 159,632 votes were cast against it. The amendment, having received more votes for adoption than against, was ratified and became a part of the Constitution. The term and eligibility of sheriffs is governed by Section 11 of this Article.

The legislature can neither lengthen nor shorten the term of an office that is fixed by the Constitution. *Howard v. State*, 10 Ind. 99. Persons elected to fill vacancies in the office of clerk of the circuit court hold their offices for four years. *Governor v. Nelson*, 6 Ind. 496. When the term of a county officer is fixed by the Constitution, his successor must be elected at the general election held next before the date of the expiration of his term. *Russell v. State*, 171 Ind. 623.

**Sec. 3. Statutory officers.**—Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law.

The legislature may change the time of electing township officers and thereby extend the term of such officers beyond the time for which they were elected. *State v. Menaugh*, 151 Ind. 260. The legislature has authority to create county and township officers and to fix the qualifications of the holders. *State v. Goldhait*, 172 Ind. 210. It may be provided by law that offices created by the legislature may be filled by appointment. *State v. Hall*, 173 Ind. 145.

**Sec. 4. Qualifications of county officers.**—No person shall be elected, or appointed, as a county officer, who shall not be an elector of the county; nor any one who shall not have been an inhabitant thereof, during one year next preceding his appointment, if the county shall have been so long organized; but if the county shall not have been so long organized, then within the limits of the county or counties, out of which the same shall have been taken.

**Sec. 5. Residence of state officers.**—The Governor, and the Secretary, Auditor, and Treasurer of State, shall, severally, reside and keep the public records, books, and papers, in any manner relating to their respective offices, at the seat of government.

**Sec. 6. Residence of other officers.**—All county, township, and town officers, shall reside within their respective counties, townships, and towns; and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law.

**Sec. 7. Impeachment of state officers.**—All State officers shall, for crime, incapacity, or negligence, be liable to be removed from office, either by impeachment by the House of Representatives, to be tried by the Senate, or by a joint resolution of the General Assembly; two-thirds of the members elected to each branch voting, in either case, therefor.

**Sec. 8. Impeachment of other officers.**—All State, county, township, and town officers, may be impeached, or removed from office, in such manner as may be prescribed by law.

A prosecuting attorney is neither a state nor a county officer and therefore cannot be removed under Secs. 7 and 8 but may be removed under Sec. 12 of Art. 7. *State v. Patterson*, 181 Ind. 660.

**Sec. 9. Vacancies.**—Vacancies in county, township, and town offices, shall be filled in such manner as may be prescribed by law.

**Sec. 10. County boards.**—The General Assembly may confer upon the boards doing county business in the several counties, powers of a local, administrative character.

**Sec. 11. Term of sheriff.**—Notwithstanding any other provision hereof, the sheriff of each county shall be elected in the general election held in the year 1950 and each four years thereafter. The term of office of each such sheriff shall be four years beginning upon the first day of January next following his election and no person shall be eligible to such office more than eight years in any period of twelve years: *Provided, however*, That any elected sheriff who shall hold said office on December 31, 1950, and who shall have been elected to said office for a period of less than two consecutive years immediately preceding, shall continue in said office for the four year term commencing January 1, 1951.

This section was not a part of the Constitution as originally adopted. The amendment was submitted to the voters at the general election held on November 2, 1948. The total number of votes cast at the general election of 1948 was 1,660,904. The total number of votes cast in favor of the amendment was 283,533 and the total number of votes cast against it was 151,638. The amendment, having received more votes for adoption than against, was ratified and became a part of the Constitution.

## ARTICLE 7. JUDICIAL

**Section 1. Judicial power.**—The judicial power of the State shall be vested in a Supreme Court, Circuit Courts and such other courts as the General Assembly may establish.

As adopted in 1851, the word "inferior" was used instead of the word "other" where it now occurs in this section. The amendment to this section was submitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election. 116,570 votes were cast in favor of the amendment and 41,434 votes were cast against it. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election.

At the present time there is a Supreme Court of 5 judges, an Appellate Court of 6 judges, 84 circuit courts, 19 superior courts, 2 criminal courts, 3 probate courts, and 2 juvenile courts in the state.

**Sec. 2. Supreme Court.**—The Supreme Court shall consist of not less than three, nor more than five judges; a majority of whom shall form a quorum. They shall hold their offices for six years, if they so long behave well.

**Sec. 3. Districts.**—The State shall be divided into as many districts as there are Judges of the Supreme Court; and such districts shall be formed of contiguous territory, as nearly equal in population, as, without dividing a county, the same can be made. One of said Judges shall be elected from each district, and reside therein; but said Judges shall be elected by the electors of the State at large.

The following table shows the counties embraced in each of the 5 districts into which the state is divided and the population of each district:

**First District.**—Clay, Daviess, Dubois, Gibson, Greene, Knox, Martin, Monroe, Morgan, Orange, Owen, Parke, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh and Warrick. Population 579,256.

**Second District.**—Bartholomew, Brown, Clark, Crawford, Dearborn, Decatur, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Ohio, Ripley, Rush, Scott, Shelby, Switzerland and Washington. Population, 411,003.

**Third District.**—Boone, Clinton, Fountain, Hamilton, Hendricks, Johnson, Marion, Montgomery, Putnam, Tippecanoe, Tipton, Vermillion, Vigo, Warren and White. Population 996,179.

**Fourth District.**—Adams, Allen, Blackford, Delaware, Fayette, Franklin, Grant, Hancock, Henry, Howard, Huntington, Jay, Madison, Randolph, Union, Wayne, Wells and Whitley. Population 831,288.

**Fifth District.**—Benton, Carroll, Cass, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, Lagrange, Lake, LaPorte, Marshall, Miami, Newton, Noble, Porter, Pulaski, St. Joseph, Starke, Steuben and Wabash. Population, 1,116,498.

**Sec. 4. Jurisdiction.**—The Supreme Court shall have jurisdiction, co-extensive with the limits of the State, in appeals and writs of error, under such regulations and restrictions as may be prescribed by law. It shall also have such original jurisdiction as the General Assembly may confer.

**Sec. 5. Decision.**—The Supreme Court shall, upon the decision of every case, give a statement in writing of each question arising in the record of such case, and the decision of the Court thereon.

**Sec. 6. Publication.**—The General Assembly shall provide, by law, for the speedy publication of the decisions of the Supreme Court, made under



this Constitution; but no Judge shall be allowed to report such decisions.

The decisions of the Supreme Court are published in volumes known as the "Indiana Reports." Prior to the adoption of the present Constitution, the Supreme Court reports were edited and published by Isaac Blackford, one of the judges of the Supreme Court.

**Sec. 7. Clerk.**—There shall be elected by the voters of the State, a Clerk of the Supreme Court, who shall hold his office four years, and whose duties shall be prescribed by law.

**Sec. 8. Circuit courts.**—The Circuit Courts shall each consist of one Judge and shall have such civil and criminal jurisdiction as may be prescribed by law.

**Sec. 9. Judicial circuits.**—The State shall, from time to time, be divided into judicial circuits; and a judge for each circuit shall be elected by the voters thereof. He shall reside within the circuit, and shall hold his office for the term of six years, if he so long behave well.

**Sec. 10. Substitution of judges.**—The General Assembly may provide, by law, that the judge of one circuit may hold the Courts of another circuit, in cases of necessity or convenience; and in case of temporary inability of any Judge, from sickness or other cause, to hold the Courts in his circuit, provision may be made, by law, for holding such courts.

**Sec. 11. Prosecuting attorneys.**—There shall be elected in each judicial circuit by the voters thereof a prosecuting attorney, who shall hold his office for four years, and whose term of office shall begin on the first day of January next succeeding his election. The election of prosecuting attorneys under this section shall be held at the time of holding the general election in the year 1954 and each four years thereafter: Provided, That any such officer whose term is abridged by virtue of this section shall continue to serve until January 1, 1959.

As adopted in 1851, Sec. 11 provided that "There shall be elected in each Judicial Circuit, by the voters thereof, a Prosecuting Attorney, who shall hold his office for two years." The present amendment to this section was submitted to the voters at the general election held on November 4, 1952. According to the Secretary of State's General Election Report 1,817,502 votes were cast at the election. 267,052 votes were cast in favor of the amendment and 163,662 votes were cast against it. The amendment, having received more votes for adoption than against, was ratified and became a part of the Constitution.

**Sec. 12. Removal from office.**—Any Judge or Prosecuting Attorney, who shall have been convicted of corruption or other high crime, may, on information in the name of the State, be removed from office by the Supreme Court, or in such other manner as may be prescribed by law.

**Sec. 13. Pay.**—The judges of the Supreme Court and Circuit Courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office.

The annual salary of a judge of the Supreme or Appellate Court is \$13,500, and a judge of a Circuit Court receives \$5,400 to \$9,600 annually from the state treasury according to the population of the judicial circuit.

**Sec. 14. Justices of the Peace.**—A competent number of Justices of the Peace shall be elected, by the voters in each township in the several

counties. They shall continue in office four years, and their powers and duties shall be prescribed by law.

**Sec. 15. Conservators of the peace.**—All judicial officers shall be conservators of the peace in their respective jurisdictions.

**Sec. 16. Ineligibility.**—No person elected to any judicial office, shall, during the term for which he shall have been elected, be eligible to any office of trust or profit, under the State, other than a judicial office.

**Sec. 17. Grand jury.**—The General Assembly may modify, or abolish, the Grand Jury system.

**Sec. 18. Criminal prosecutions.**—All criminal prosecutions shall be carried on, in the name, and by the authority, of the State; and the style of all process shall be: "The State of Indiana."

**Sec. 19. Tribunals of conciliation.**—Tribunals of conciliation may be established, with such powers and duties as shall be prescribed by law; or the powers and duties of the same may be conferred upon other Courts of Justice; but such tribunals or other Courts, when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference, and agree to abide the judgment of such tribunal or Court.

**Sec. 20. Law revisions.**—The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, whose duty it shall be to revise, simplify, and abridge, the rules, practice, pleadings, and forms of the Courts of Justice. And they shall provide for abolishing the distinct forms of action at law, now in use; and that justice shall be administered in a uniform mode of pleading, without distinction between law and equity. And the General Assembly may, also, make it the duty of said Commissioners to reduce into a systematic code, the general statute law of the State; and said Commissioners shall report the result of their labors to the General Assembly, with such recommendations and suggestions, as to abridgement and amendment, as to said Commissioners may seem necessary or proper. Provisions shall be made, by law, for filling vacancies, regulating the tenure of office, and the compensation of said Commissioners.

**Sec. 21.** [Stricken out by constitutional amendment of 1932.]

As adopted in 1851, this section read as follows: "Every person of good moral character, being a voter, shall be entitled to admission to practice law in all courts of justice." The amendment which provided: "That the Constitution of the State of Indiana be amended by striking out all of section 21 of Article 7," was submitted to the voters at the general election held on November 8, 1932. The total number of votes cast at the election was 1,600,484. The total number of votes cast in favor of the amendment was 439,949 and the total number of votes cast against the amendment was 236,613. The amendment, having received more votes for adoption than against, was ratified.

## ARTICLE 8. EDUCATION

**Section 1. Common school system.**—Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a

free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.

The compulsory school law is not in violation of this section. *State v. Bailey*, 157 Ind. 324. Local school corporations have authority to levy a tax for the support of common schools. *Shephardson v. Gillette*, 133 Ind. 125.

**Sec. 2. Common school fund.**—The Common School fund shall consist of the Congressional Township fund, and the lands belonging thereto;

The Surplus Revenue fund;

The Saline fund and the lands belonging thereto;

The Bank Tax fund, and the fund arising from the one hundred and fourteenth section of the charter of the State Bank of Indiana;

The fund to be derived from the sale of county Seminaries, and the moneys and property heretofore held for such Seminaries; from the fines assessed for breaches of the penal laws of the State; and from all forfeitures which may accrue;

All lands and other estates which shall escheat to the State, for want of heirs or kindred entitled to the inheritance;

All lands that have been, or may hereafter be, granted to the State, where no special purpose is expressed in the grant, and the proceeds of the sales thereof; including the proceeds of the sales of the swamp lands, granted to the State of Indiana by the act of Congress of the twenty-eighth of September, eighteen hundred and fifty, after deducting the expense of selecting and draining the same;

Taxes on the property of corporations, that may be assessed by the General Assembly for common school purposes.

**Sec. 3. Principal and income.**—The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever.

**Sec. 4. Investment and distribution.**—The General Assembly shall invest, in some safe and profitable manner, all such portions of the Common School fund, as have not heretofore been entrusted to the several counties; and shall make provision, by law, for the distribution, among the several counties, of the interest thereof.

**Sec. 5. Reinvestment.**—If any county shall fail to demand its proportion of such interest, for Common School purposes, the same shall be reinvested, for the benefit of such county.

**Sec. 6. Liability of counties.**—The several counties shall be held liable for the preservation of so much of the said fund as may be entrusted to them, and for the payment of the annual interest thereon.

**Sec. 7. Trust funds.**—All trust funds, held by the State, shall remain



inviolable, and be faithfully and exclusively applied to the purposes for which the trust was created.

**Sec. 8. Superintendent of Public Instruction.**—The General Assembly shall provide for the election, by the voters of the State, of a State Superintendent of Public Instruction; who shall hold his office for two years, and whose duties and compensation shall be prescribed by law.

## ARTICLE 9. STATE INSTITUTIONS

**Section 1. Support of institutions.**—It shall be the duty of the General Assembly to provide, by law, for the support of Institutions for the education of the Deaf and Dumb, and of the Blind; and also for the treatment of the Insane.

**Sec. 2. Houses of refuge.**—The General Assembly shall provide houses of refuge, for the correction and reformation of juvenile offenders.

**Sec. 3. County farms.**—The county boards shall have power to provide farms, as an asylum for those persons, who, by reason of age, infirmity, or other misfortune, have claims upon the sympathies and aid of society.

## ARTICLE 10. FINANCE

**Section 1. Assessment and taxation.**—The General Assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only for municipal, educational, literary, scientific, religious or charitable purposes, as may be specially exempted by law.

Taxes must be uniform and equal throughout the unit in which they are levied. *Board v. State*, 155 Ind. 604. The law providing for the deduction of mortgage indebtedness is valid. *State v. Smith*, 158 Ind. 543.

**Sec. 2. Disposition of revenue.**—All the revenue derived from the sale of any of the public works belonging to the State, and from the net annual income thereof, and any surplus that may, at any time, remain in the treasury, derived from taxation for general State purposes, after the payment of the ordinary expenses of the government, and of the interest on bonds of the State, other than bank bonds, shall be annually applied, under the direction of the General Assembly, to the payment of the principal of the public debt.

**Sec. 3. Appropriations.**—No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

**Sec. 4. Publication of statement.**—An accurate statement of the receipts and expenditures of the public money, shall be published with the laws of each regular session of the General Assembly.

**Sec. 5. State debt.**—No law shall authorize any debt to be contracted, on behalf of the State, except in the following cases: To meet casual deficits in the revenue; to pay the interest on the State debt; to repel

invasion, suppress insurrection, or, if hostilities be threatened, provide for the public defense.

**Sec. 6. Counties.**—No county shall subscribe for stock in any incorporated company, unless the same be paid for at the time of such subscription; nor shall any county loan its credit to any incorporated company, nor borrow the money for the purpose of taking stock in any such company; nor shall the General Assembly ever, on behalf of the State, assume the debts of any county, city, town or township, nor of any corporation whatever.

**Sec. 7. Wabash and Erie Canal.**—No law or resolution shall ever be passed by the General Assembly of the State of Indiana, that shall recognize any liability of this State to pay or redeem any certificate of stock issued in pursuance of an act entitled "An act to provide for the funded debt of the State of Indiana, and for the completion of the Wabash and Erie Canal to Evansville," passed January 19, 1846, and an act supplemental to said act, passed January 29, 1847, which, by the provisions of the said acts, or either of them, shall be payable exclusively from the proceeds of the canal lands, and the tolls and revenues of the canal in said acts mentioned, and no such certificate or stocks shall ever be paid by this State.

This section was not a part of the Constitution as originally adopted. The amendment was submitted to the voters at a special election held on February 18, 1873. The total number of votes cast at the election was 159,430. The total number of votes cast in favor of the amendment was 158,400 and the total number of votes cast against it was 1,030. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election.

**Sec. 8. Income tax.**—The General Assembly may levy and collect a tax upon income, from whatever source derived, at such rates, in such manner, and with such exemptions as may be prescribed by law.

This section was not a part of the Constitution as originally adopted. The amendment was submitted to the voters at the general election held on November 8, 1932. The total number of votes cast at the election was 1,600,484. The total number of votes cast in favor of the amendment was 701,045 and the total number of votes cast against it was 209,076. The amendment, having received more votes for adoption than against, was ratified and became a part of the Constitution.

## ARTICLE 11. CORPORATIONS

**Section 1. Banks.**—The General Assembly shall not have power to establish, or incorporate, any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order or bearer, except under the conditions prescribed in this Constitution.

**Sec. 2. Laws.**—No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

**Sec. 3. Money.**—If the General Assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an

officer of State, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie, for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of State.

**Sec. 4. Branches.**—The General Assembly may also charter a bank with branches, without collateral security, as required in the preceding section.

**Sec. 5. Responsibility of branches.**—If the General Assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities, upon all paper credit issued as money.

**Sec. 6.** [Stricken out by constitutional amendment ratified by the electors at the general election held November 5, 1940.]

As adopted in 1851, this section read as follows: "The stockholders in every bank or banking company shall be individually responsible, to an amount, over and above their stock, equal to their respective shares of stock, for all debts or liabilities of said bank or banking company." The present amendment which provides: "That the Constitution of the State of Indiana be amended by striking out Sec. 6 of Article 11," was submitted to the voters at the general election held on November 5, 1940. 1,729,409 votes were cast at the election. 355,578 votes were cast in favor of the amendment and 267,589 votes were cast against it. The amendment, having received more votes for adoption than against, was ratified.

**Sec. 7. Redemption.**—All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning, directly or indirectly, the suspension, by any bank or banking company, of specie payments.

**Sec. 8. Preference.**—Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

**Sec. 9. Interest.**—No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed, by law, to individuals loaning money.

**Sec. 10.** [Stricken out by constitutional amendment ratified by the electors at the general election held November 5, 1940.]

As adopted in 1851, this section read as follows: "Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business." The amendment which provided: "That the Constitution of the State of Indiana be amended by striking out Sec. 10 of Article 11," was submitted to the voters at the general election held on November 5, 1940. The total number of votes cast at the election was 1,729,409. The total number of votes cast in favor of the amendment was 325,280 and the total number of votes cast against it was 242,846. The amendment, having received more votes for adoption than against, was ratified.

**Sec. 11. Trust funds.**—The General Assembly is not prohibited from investing the trust funds in a bank with branches; but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.



**Sec. 12. State as stockholder.**—The State shall not be a stockholder in any bank, after the expiration of the present bank charter; nor shall the credit of the State ever be given, or loaned, in aid of any person, association or corporation; nor shall the State hereafter become a stockholder in any corporation or association.

**Sec. 13. Other corporations formation.**—Corporations, other than banking, shall not be created by special act, but may be formed under general laws.

This section applies to municipal corporations. *Town of Longview v. City of Crawfordsville*, 164 Ind. 117.

**Sec. 14. Liability.**—Dues from corporations shall be secured by such individual liability of the stockholders, or other means, as may be prescribed by law.

As adopted in 1851, this section read as follows: "Dues from corporations, other than banking, shall be secured by such individual liability of the corporators, or other means, as may be prescribed by law." The present amendment was voted on at the general election held on November 5, 1940. The total number of votes cast at the election was 1,729,409. The total number of votes cast in favor of the amendment was 344,262 and the total number of votes cast against it was 229,370. The amendment, having received more votes for adoption than against, was ratified and became a part of the Constitution.

## ARTICLE 12. MILITIA

**Section 1. Composition.**—The militia shall consist of all able-bodied male persons, between the ages of eighteen and forty-five years, except such as may be exempted by the laws of the United States, or of this State; and shall be organized, officered, armed, equipped, and trained in such manner as may be provided by law.

As adopted in 1851, the word "white" occurred before the word "male," thus restricting compulsory service in the national guard to white male persons. The amendment to this section was voted on at the general election of November 3, 1936. The total number of votes cast at the election was 1,643,820. The total number of votes cast in favor of the amendment was 426,031 and the total number of votes cast against it was 398,201. The amendment, having received more votes for adoption than against, was ratified and became a part of the Constitution.

**Sec. 2. Appointments.**—The Governor shall appoint the Adjutant, Quartermaster and Commissary Generals.

**Sec. 3. Officers.**—All militia officers shall be commissioned by the Governor, and shall hold their offices not longer than six years.

**Sec. 4. Division.**—The General Assembly shall determine the method of dividing the militia into divisions, brigades, regiments, battalions, and companies, and fix the rank of all staff officers.

**Sec. 5. Classes.**—The militia may be divided into classes of sedentary and active militia, in such manner as shall be prescribed by law.

**Sec. 6. Conscientious objectors.**—No person, conscientiously opposed to bearing arms, shall be compelled to do militia duty; but such person shall pay an equivalent for exemption; the amount to be prescribed by law.

## ARTICLE 13. POLITICAL AND MUNICIPAL CORPORATIONS

**Section 1. Debt limitation.**—No political or municipal corporation in this State shall ever become indebted in any manner or for any purpose to an amount in the aggregate exceeding two per centum on the value of the taxable property within such corporation, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; and all bonds or obligations, in excess of such amount, given by such corporation shall be void: *Provided*, That in time of war, foreign invasion or other great public calamity, on petition of a majority of the property owners, in number and value, within the limits of such corporation, the public authorities, in their discretion, may incur obligations necessary for the public protection and defense, to such an amount as may be requested in such petition.

The original Article 13 as adopted in 1851 was stricken out and the present Article inserted in 1881. The original Article read as follows:

"Section 1. No Negro or Mulatto shall come into or settle in the State, after the adoption of this Constitution.

Sec. 2. All contracts made with any Negro or Mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such Negro or Mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars.

Sec. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated for the colonization of such Negroes and Mulattoes, and their descendants, as may be in the State at the adoption of this Constitution, and may be willing to emigrate.

Sec. 4. The General Assembly shall pass laws to carry out the provisions of this article."

The present amendment was submitted to the voters at a special election held on March 14, 1881. There were 172,900 votes cast at the election. 126,221 votes were cast in favor of the amendment and 36,435 votes were cast against it. The amendment was ratified and became a part of the Constitution, as it received a majority of the votes cast at the election.

Indebtedness created by the improvement or repair of streets does not come within this article. *Quill v. Indianapolis*, 124 Ind. 292; *New Albany v. McCulloch*, 127 Ind. 500; *Cason v. City of Lebanon*, 153 Ind. 567. Bonds issued for the improvement of highways are not debts of the county or township. *Smith v. Board*, 173 Ind. 364. This article applies to bonds issued by cities and towns to build schoolhouses. *Town of Winamac v. Huddleston*, 132 Ind. 217; *Wilcoxon v. City of Bluffton*, 153 Ind. 267. The debt of a school city is not considered as a part of the corresponding civil city. *Heine v. City of Terre Haute*, 161 Ind. 44; *Campbell v. City of Indianapolis*, 155 Ind. 186. The issuance of gravel road bonds is not governed by this section limiting indebtedness. *Brown v. Guthrie*, 185 Ind. 669.

There may be more than one governmental unit in identical territory and in proper cases the debt limitation imposed by this section applies separately to the indebtedness of each unit and not to the indebtedness in the aggregate of two or more units. The courts will look through form to substance, however, to make certain the additional unit was not created for the purpose of evading the intent of the Constitution. *Rappaport v. Dept. of Public Health*, 227, Ind. 508; *Dept. of Pub. Sanitation v. Sloan*, 229 Ind. 228.

## ARTICLE 14. BOUNDARIES

**Section 1. State.**—In order that the boundaries of the State may be known and established, it is hereby ordained and declared, that the State of Indiana is bounded, on the East, by the meridian line, which forms the western boundary of the State of Ohio; on the South, by the Ohio river, from the mouth of the Great Miami river to the mouth of the Wabash river; on the West, by a line drawn along the middle of the Wabash river, from its mouth to a point where a due north line, drawn from the town of Vincennes, would last touch the northwestern shore of said Wabash river; and, thence, by a due north line, until the same shall intersect an east and west line, drawn through a point ten miles north of the southern extreme of Lake Michigan; on the North, by said east and west line, until the same shall intersect the first mentioned meridian line, which forms the western boundary of the State of Ohio.

The boundaries of Indiana were not fixed by the adoption of the state Constitution, but by Congress and their recital in the Constitution is merely a memorandum thereof. *Watts v. Evansville, etc. R. Co.*, 123 N. E. 709. Although the low-water mark on the north side of the Ohio River is the southern boundary of the state, the boundary line between Kentucky and Indiana on land south of Evansville and north of the Ohio River, in what is commonly referred to as the Green River Island area, had been in dispute for well over one hundred years until 1943. This was due to the fact that the terminal points of the boundary line fixed by the Supreme Court of the United States failed to reach the low-water mark of the right side of the Ohio River, forming the remainder of the boundary line. *Indiana v. Kentucky*, 136 U. S. 479; 159 U. S. 275; 163 U. S. 520.

In order to settle the dispute, Indiana and Kentucky entered into a compact or agreement which fixed the present boundary line by reciprocal legislation with the approval of Congress as is required by the compact clause, Article 1, section 10 of the Constitution of the United States. 1942 Kentucky Acts, chapter 116; 1943 Indiana Acts, chapter 2; 57 U. S. Statutes at Large, chapter 177, p. 248.

**Sec. 2. Jurisdiction and sovereignty.**—The State of Indiana shall possess jurisdiction and sovereignty co-extensive with the boundaries declared in the preceding section; and shall have concurrent jurisdiction, in civil and criminal cases, with the State of Kentucky on the Ohio river, and with the State of Illinois on the Wabash river, so far as said rivers form the common boundary between this State and said States respectively.

## ARTICLE 15. MISCELLANEOUS

**Section 1. Selection of officers.**—All officers, whose appointment is not otherwise provided for in this Constitution, shall be chosen in such manner as now is, or hereafter may be, prescribed by law.

The legislature cannot appoint officers. *State v. Hyde*, 121 Ind. 20; *State v. Peele*, 121 Ind. 495; *State v. Gorby*, 122 Ind. 17.

**Sec. 2. Duration of office.**—When the duration of any office is not provided for by this Constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the General Assembly shall not create any office, the tenure of which shall be longer than four years.



This section does not apply where an office is created but no tenure is fixed, *Clem v. State*, 33 Ind. 418; nor does it prevent an officer from holding over until his successor is elected and qualified, *State v. Harrison*, 113 Ind. 434. The legislature may change the time for electing officers created by statute and thereby extend the terms of such officers beyond a period of four years, *Spencer v. Knight*, 177 Ind. 564.

**Sec. 3. Extension of office.**—Whenever it is provided in this Constitution, or in any law which may be hereafter passed, that any officer, other than a member of the General Assembly, shall hold his office for any given term, the same shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.

**Sec. 4. Oath.**—Every person elected or appointed to any office under this Constitution, shall, before entering on the duties thereof, take an oath or affirmation, to support the Constitution of this State, and of the United States, and also an oath of office.

**Sec. 5. State seal.**—There shall be a Seal of State, kept by the Governor for official purposes, which shall be called the Seal of the State of Indiana.

**Sec. 6. Commissions.**—All commissions shall issue in the name of the State, shall be signed by the Governor, sealed with the State Seal, and attested by the Secretary of State.

**Sec. 7. County areas.**—No county shall be reduced to an area less than four hundred square miles; nor shall any county, under that area, be further reduced.

**Sec. 8. Lotteries.**—No lottery shall be authorized; nor shall the sale of lottery tickets be allowed.

**Sec. 9. State grounds.**—The following grounds owned by the State in Indianapolis, namely: The State House Square, the Governor's Circle, and so much of out-lot numbered one hundred and forty-seven, as lies north of the arm of the Central Canal, shall not be sold or leased.

Out-lot No. 147 is now Camp Sullivan, popularly known as Military Park and is located in the City of Indianapolis.

**Sec. 10. Tippecanoe Battle Ground.**—It shall be the duty of the General Assembly, to provide for the permanent enclosure and preservation of the Tippecanoe Battle Ground.

## ARTICLE 16. AMENDMENTS

**Section 1. Amendments.**—Any amendment or amendments to this Constitution, may be proposed in either branch of the General Assembly; and, if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and referred to the General Assembly to be chosen at the next general election; and if, in the General Assembly so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General

Assembly to submit such amendment or amendments to the electors of the State; and if a majority of said electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Under the rulings of the Supreme Court made prior to 1935, a proposed amendment, to have been adopted, must have been ratified by a majority of the electors of the state voting at the election at which the amendment was submitted. If the amendment was submitted at a general election, it must have received a majority of the votes cast at the general election, and if submitted at a special election, it must have received a majority of the votes cast at the special election. *State v. Swift*, 69 Ind. 505; *In re Denny*, 156 Ind. 104; *In re Boswell*, 179 Ind. 292.

In 1935, in the case known as *In re Todd*, 208 Ind. 168, the Supreme Court held, in considering a proposed amendment to the Constitution, submitted to the voters in 1932, that if a proposed amendment is submitted to the voters and if more votes are cast in favor of than in opposition to the amendment, the amendment is ratified even though the total vote cast in favor of the amendment is less than a majority of the total number of votes cast at the election at which the amendment is voted on.

In the case of *Swank v. Tyndall*, 226 Ind. 204, decided April 7, 1948, the Supreme Court held that the law as stated in the *Swift*, *Denney*, and *Boswell* cases, constituted the law with reference to the method of ascertaining the majority vote for ratification of proposed amendments up to but not including the date of the general election of 1932 and that as to proposed amendments submitted to the voters for ratification at the 1932 election and thereafter, the law as stated in the *Todd* case governs the method of selecting the majority vote on proposed amendments.

The legislature has no authority to draft a new constitution or amendments to an existing constitution and submit them to the voters at the next general election. *Ellingham v. Dye*, 178 Ind. 336.

#### SUMMARY OF AMENDMENTS TO INDIANA CONSTITUTION 1851—1953

##### Action of the General Assembly

1. Total number introduced .....	471
2. Defeated by vote or lack of action in introducing house .....	277
3. Adopted by introducing house, not sent to second house .....	1
4. Adopted by introducing house, defeated in second house .....	67
5. Withdrawn by author in introducing house .....	7
6. Total lost on first action .....	352
7. Total adopted by both houses on first action .....	119 471

##### ACTION OF THE NEXT SUCCEEDING GENERAL ASSEMBLY

8. Eligible for second action .....	119
9. Defeated by first house .....	39
10. Adopted by first house, defeated by second house .....	34
11. Not considered by either house .....	4
12. Adopted by first house, not sent to second house .....	1
13. Adopted by both houses, each in separate resolutions, neither resolution sent to other house. Court held invalid .....	1
14. Total lost on second action .....	79
15. Adopted by both houses—submitted to voters .....	38

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(Seven amendments included in this table were re-submitted to the voters in 1881 so actually 45 amendments have been before the voters for adoption or rejection.)

16. Pending second action—first action 1953 .....	2 119
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17. As of the year 1954, 18 of the 471 proposed amendments have been adopted as a part of the Constitution. One section, namely, Section 2 of Article 2, has been amended twice.

The following amendments have been submitted to the voters and each received more votes for than against but not a majority of the votes cast in the election at which they were submitted; under the decision in the Todd case such majority of votes is no longer necessary for ratification. The date of the election, the vote for and against each amendment is given.

Lawyers' qualifications, Nov. 6, 1900: For, 240,031; against, 144,072.  
 Supreme Court membership, Nov. 6, 1900: For, 314,710; against, 178,960.  
 Lawyers' qualifications, Nov. 6, 1906: For, 39,061; against, 12,128.  
 Lawyers' qualifications, Nov. 8, 1910: For, 60,357; against, 18,494.  
 Registration of voters, Nov. 2, 1926: For, 198,579; against, 184,684.  
 Salaries and terms—Increase, Nov. 2, 1926: For, 182,456; against, 177,748.  
 Income tax, Nov. 2, 1926: For, 239,734; against, 212,224.  
 Income tax, Nov. 6, 1932: For, 701,045; against, 209,076.  
 Lawyers' qualifications, Nov. 6, 1932: For, 439,949; against, 236,613.  
 State militia, Nov. 3, 1936: For, 426,031; against, 398,201.  
 Stockholders' liability, Nov. 5, 1940: For, 355,578; against, 267,589.  
 Limitation on banks, Nov. 5, 1940: For, 325,280; against, 242,846.  
 Corporation dues, Nov. 5, 1940: For, 344,262; against, 229,370.  
 Sheriff's term, Nov. 2, 1948: For, 283,533; against, 151,638.  
 County officers—Terms, Nov. 4, 1952: For, 289,673; against, 159,632.  
 Prosecuting attorneys—Terms, Nov. 4, 1952: For, 267,052; against, 163,662.

Following are the amendments which have been submitted to the voters, giving the date of the election, the vote for and the vote against. All were defeated because the negative was larger than the affirmative vote.

Registration of voters, Sept. 6, 1921: For, 90,269; against, 110,333.  
 Enumeration and apportionment, Sept. 6, 1921: For, 76,963; against, 117,890.  
 Veto of appropriations, Sept. 6, 1921: For, 83,265; against, 101,790.  
 State officers—Terms, Sept. 6, 1921: For, 74,177; against, 113,300.  
 County officers—Terms, Sept. 6, 1921: For, 82,389; against, 115,139.  
 Prosecuting attorneys—Terms, Sept. 6, 1921: For, 76,587; against, 116,683.  
 Lawyers' qualifications, Sept. 6, 1921: For, 78,431; against, 117,479.  
 State Superintendent—Appointment, Sept. 6, 1921: For, 46,023; against, 149,294.  
 Taxation, Sept. 6, 1921: For, 31,786; against, 166,186.  
 Income tax, Sept. 6, 1921: For, 39,005; against, 157,827.  
 Militia, Sept. 6, 1921: For, 55,027; against, 142,909.  
 Salaries—Increase, Sept. 6, 1921: For, 80,191; against, 117,140.  
 Apportionment, Nov. 2, 1926: For, 183,828; against, 189,928.

**Sec. 2. Submission.**—If two or more amendments shall be submitted at the same time, they shall be submitted in such manner, that the electors shall vote for or against each of such amendments separately; and while an amendment or amendments, which shall have been agreed upon by one General Assembly, shall be awaiting the action of a succeeding General Assembly, or of the electors, no additional amendment or amendments shall be proposed.

#### SCHEDULE.

This Constitution, if adopted, shall take effect on the first day of November, in the year one thousand eight hundred and fifty-one, and shall supersede the Constitution adopted in the year one thousand eight hundred and sixteen. That no inconvenience may arise from the change in the government, it is hereby ordained as follows:

First. All laws now in force, and not inconsistent with this Constitution, shall remain in force, until they shall expire or be repealed.



Second. All indictments, prosecutions, suits, pleas, complaints, and other proceedings, pending in any of the courts, shall be prosecuted to final judgment and execution; and all appeals, writs of error, certiorari, and injunctions, shall be carried on in the several courts, in the same manner as is now provided by law.

Third. All fines, penalties, and forfeitures, due or accruing to the State, or to any county therein, shall inure to the State, or to such county, in the manner prescribed by law. All bonds executed to the State, or to any officer, in his official capacity, shall remain in force, and inure to the use of those concerned.

Fourth. All acts of incorporation for municipal purposes shall continue in force under this Constitution, until such time as the General Assembly shall, in its discretion, modify or repeal the same.

Fifth. The Governor, at the expiration of the present official term, shall continue to act, until his successor shall have been sworn into office.

Sixth. There shall be a session of the General Assembly, commencing on the first Monday of December, in the year one thousand eight hundred and fifty-one.

Seventh. Senators now in office and holding over, under the existing Constitution, and such as may be elected at the next general election, and the Representatives then elected, shall continue in office until the first general election under this Constitution.

Eighth. The first general election under this Constitution, shall be held in the year one thousand eight hundred and fifty-two.

Ninth. The first election for Governor, Lieutenant Governor, Judges of the Supreme Court and Circuit Courts, Clerk of the Supreme Court, Prosecuting Attorneys, Secretary, Auditor and Treasurer of State, and State Superintendent of Public Instruction, under this Constitution, shall be held at the general election in the year one thousand eight hundred and fifty-two; and such of said officers as may be in office when this Constitution shall go into effect, shall continue in their respective offices, until their successors shall have been elected and qualified.

Tenth. Every person elected by popular vote, and now in any office which is continued by this Constitution, and every person who shall be so elected to any such office before the taking effect of this Constitution (except as in this Constitution otherwise provided), shall continue in office, until the term for which such person has been, or may be, elected, shall expire: *Provided*, That no such person shall continue in office, after the taking effect of this Constitution, for a longer period than the term of such office in this Constitution prescribed.

Eleventh. On the taking effect of this Constitution, all officers thereby continued in office, shall, before proceeding in the further discharge of their duties, take an oath or affirmation to support this Constitution.

Twelfth. All vacancies that may occur in existing offices, prior to the first general election under this Constitution, shall be filled in the manner now prescribed by law.

Thirteenth. At the time of submitting this Constitution to the electors, for their approval or disapproval, the article numbered thirteen, in relation to Negroes and Mulattoes, shall be submitted as a distinct proposition, in the following form: "Exclusion and Colonization of Negroes and Mulattoes," "Aye" or "No." And if a majority of the votes cast shall be in favor of said article, then the same shall form a part of this Constitution; otherwise, it shall be void, and form no part thereof.

Fourteenth. No article or section of this Constitution shall be submitted as a distinct proposition, to a vote of the electors, otherwise than as herein provided.

Fifteenth. Whenever a portion of the citizens of the counties of Perry and Spencer, shall deem it expedient to form, of the contiguous territory of said counties, a new county, it shall be the duty of those interested in the organization of such new county, to lay off the same, by proper metes and bounds, of equal portions, as nearly as practicable, not to exceed one-third of the territory of each of said counties. The proposal to create such new county shall be submitted to the voters of said counties, at a general election, in such manner as shall be prescribed by law. And if a majority of all the votes given at said election, shall be in favor of the organization of said new county, it shall be the duty of the General Assembly to organize the same, out of the territory thus designated.

Sixteenth. The General Assembly may alter or amend the charter of Clarksville, and make such regulations as may be necessary for carrying into effect the objects contemplated in granting the same; and the funds belonging to said town shall be applied, according to the intention of the grantor.

Done in Convention, at Indianapolis, the tenth day of February, in the year of our Lord one thousand eight hundred and fifty-one; and of the Independence of the United States, the seventy-fifth.

# CONSTITUTION OF THE UNITED STATES, 1789\*

## PREAMBLE.

We the People of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

The preamble bears witness to the fact that the Constitution emanated from the people, and was not the act of sovereign and independent states. *McCulloch v. Maryland*, 4 Wheat. 316; *Downes v. Bidwell*, 182 U. S. 244.

## ARTICLE I. LEGISLATIVE DEPARTMENT

**Section 1.** All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

The doctrine that the federal government is one of enumerated powers is derived in part from this section. *McCulloch v. Maryland*, 4 Wheat. 316.

**Sec. 2.** The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

[Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six,

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\*Drafted by a convention which met at Philadelphia on May 25 and adjourned on September 17, 1787. The Constitution became operative when ratified by 9 of the 13 states. The government created by the Constitution began operations on March 4, 1789.



Virginia ten, North Carolina five, South Carolina five, and Georgia three. When vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

The part enclosed in brackets has been modified by Amendment XIV, Section 2.

Sec. 3. [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.]

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; [and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.]

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

The parts enclosed in brackets have been changed by Amendment XVII.

Sec. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

The right of the national government to regulate primary elections conducted under State law for the nomination of members of Congress has been recognized where such primary is made by State law "an integral part of the procedure of choice, or where in fact the primary effectively controls the choice." *United States v. Classic*, 313 U.S. 299.

The Congress shall assemble at least once in every year, and such meeting shall be on the [first Monday in December], unless they shall by law appoint a different day.

The part enclosed in brackets has been changed by Amendment XX, Section 2.

Sec. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sec. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

The phrase "except treason, felony, and breach of the peace," is interpreted to withdraw all criminal offenses from the operation of the privilege. *Williamson v. United States*, 207 U. S. 425.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Only bills to levy taxes in the strict sense of the word are comprehended by the phrase "all bills for raising revenue"; bills for other purposes, which incidentally create revenue, are not included. *U. S. v. Norton*, 91 U. S. 566.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and

proceed to reconsider it. If after such reconsideration two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment prevent its return, in which case it shall not be a law.

Pursuant to this clause the President may act on a bill presented to him by Congress in one of several different ways: he may sign the bill, which then becomes law; he may allow the bill to remain unsigned for ten days (Sunday excepted) while Congress is in session, whereupon it becomes a law; he may veto the bill by sending it back to the House in which it originated with his reasons for opposing it; as to bills presented to the President toward the close of a session, it has been held under this clause that "a bill signed by the President within ten days (Sunday excepted) after it was presented to him, but after the final adjournment of the Congress that passed it, becomes a law"; and that "a bill presented to the President less than ten days (Sunday excepted) before adjournment, but is neither signed by the President nor returned by him to the House in which it originated, does not become a law." The latter is known as the "pocket veto." Oxford Review Series "American Government," p. 28; The Pocket Veto Case, 279 U. S. 655; *Edwards v. United States*, 286 U. S. 482.

Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

This clause is the direct source of the most important powers which the federal government exercises in time of peace and except for the due process of law clause of the fourteenth amendment, it is the most important limitation imposed by the Constitution on the exercise of state power. Thousands of decisions in the state and federal courts have construed this clause.

"Commerce" in the sense of the Constitution and consequently "interstate commerce" when it is carried on across state lines, covers every species of movement of persons and things, whether for profit or not; every species of communication, every species of transmission of intelligence, whether for commercial purposes or otherwise; every species of commercial negotiation which, as shown "by the established course of the business," will involve sooner or later an act of transportation of persons or things, or the flow of services or power across state lines. *Edwards v. California*, 314 U. S.



160; *Fed'l Radio Com. v. Nelson Bros.*, 289 U. S. 266; *Swift and Co. v. United States*, 196 U. S. 375.

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post-roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

This clause is the foundation upon which the national patent and copyright laws rest, although it uses neither of those terms. The exclusive right which Congress is authorized to secure to authors and inventors owes its existence solely to the acts of Congress securing it. *Wheaton v. Peters*, 8. Pet. 591.

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Sec. 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or *ex post facto* law shall be passed.

No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

This section is devoted to restraints upon the powers of Congress and the national government, and in no respect affects the states in the regulation of their domestic affairs. *Munn v. Illinois*, 94 U. S. 113.

Sec. 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or *compact* with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

This section is devoted to restraints upon the powers of the several states and at the time of the Civil War, the first clause of the section was one of the provisions upon which the Supreme Court of the United States relied in holding that the Confederation formed by the seceding states could not be recognized as having any legal existence. *Williams v. Bruffy*, 96 U. S. 176.

The compact provision of this section has been used for many other purposes than for the settlement of state boundary disputes (See note to Article 14, section 1 of the Indiana Constitution), such as: in the field of higher education; to provide bridges over boundary streams; water allocation; river pollution; flood control; supervision of parolees and probationers; oil and marine fisheries agreements. The number of states participating in such agreements or compacts has ranged from two to as many as forty-six as of the year 1951. A comprehensive review of this subject is contained in a publication of the Council of State Governments entitled "The Interstate

Compact Since 1925." In *Virginia v. West Virginia*, 246 U. S. 565, it was held that valid interstate compacts are within the protection of the obligation of contracts clause, the specific enforcement of which is within the original jurisdiction of the Supreme Court, and that Congress also has authority to compel compliance with such compacts or agreements.

Indiana is a member of the Ohio River Valley Water Sanitation Compact. 1939 Acts, chapter 35; 54 United States Stats. at Large, chapter 581.

## ARTICLE II. EXECUTIVE DEPARTMENT

**Section 1.** The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Formerly the term of four years during which the President "shall hold office" was reckoned from March 4 of the alternate odd years beginning with 1789. The Twentieth Amendment fixed the commencement of the terms of the President and Vice President on the twentieth of January. The Twenty-second Amendment to the Constitution provides in part that: "No person shall be elected to the office of the President more than twice. . . ."

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the Representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.]

The provisions of this clause have been superseded by Amendment XII.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.



No person except a natural-born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

In 1948, Congress provided for succession pursuant to this clause in the sequence as follows: Speaker of the House of Representatives; President *pro tempore* of the Senate; Secretary of State; Secretary of the Treasury; Secretary of Defense; Attorney General; Postmaster General; Secretary of the Interior; Secretary of Agriculture; Secretary of Commerce; Secretary of Labor. 62 United States Stats. at Large, chapter 644.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

Sec. 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Sec. 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

### ARTICLE III. JUDICIAL DEPARTMENT

Section 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial power has been defined as "the right to determine actual controversies arising between adverse litigants, instituted in courts of proper jurisdiction." Jurisdiction is the authority of a court to exercise judicial power in a specific case and is a prerequisite to the judicial power, which is the totality of powers a court exercises when it assumes jurisdiction and hears and decides a case.

While all of the judicial power of the United States is vested in the Supreme Court and federal courts of inferior jurisdiction, none has ever been vested with all the jurisdiction it is capable of receiving under this Article. Except for the original jurisdiction of the Supreme Court, which flows directly from the Constitution, two prerequisites to jurisdiction must be present. First, the Constitution must have given the courts the capacity to receive it; second, an act of Congress must have conferred it. *Muskrat v. United States*, 219 U. S. 346; *Williams v. United States*, 289 U. S. 553; *Chisholm v. Georgia*, 2 Dall. 419; *Mayor of Nashville v. Cooper*, 6 Wall. 247.

Sec. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

This clause has been modified by Amendment XI.

The Supreme Court has held that a corporation created by and doing business in a particular State is deemed to be a person, although an artificial person, an inhabitant of the same State for the purposes of its incorporation, capable of being treated as a citizen of that State as much as a

natural person. *Louisville, Cincinnati, and Charleston R. Co. v. Letson*. 2 How. 497.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

See Amendment VI.

**Sec. 3.** Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Supreme Court sustained a conviction of treason for the first time in history in 1947. The father of a son who was an enemy spy was convicted for sheltering the son, assisting him financially, and in obtaining his employment in a defense plant. While these were all acts which a father would naturally perform for a son, it was held by the court that under the circumstances these acts of assistance were aid to the son in steps essential to his design for treason. *Haupt v. United States*, 330 U. S. 631.

The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

#### ARTICLE IV. STATES' RELATIONS

**Section 1.** Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State; and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

The "full faith and credit" clause is one of the provisions incorporated into the Constitution by its framers for the purpose of transforming an aggregation of independent, sovereign States into a nation. If in its application local policy must be required to give way, such "is part of the price of our federal system." *Sherrer v. Sherrer*, 334 U. S. 343.

**Sec. 2.** The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

This clause merely forbids any State to discriminate against citizens of other States in favor of its own and its purpose was "to declare to the several States that whatever these rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction." *Slaughter-House Cases*, 16 Wall. 36.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on



demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due.

Sec. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Sec. 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature, or of the Executive (when the Legislature can not be convened), against domestic violence.

#### ARTICLE V. MODE OF AMENDMENT

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislature of two-thirds of the several States, shall call a convention for proposing amendments; which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: *Provided*, That no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

The vote required to propose an amendment is a vote of two-thirds of the members present (assuming the presence of a quorum), and not a vote of two-thirds of the entire membership present and absent. The approval of the President is not necessary for a proposed amendment. Congress may, in proposing an amendment, set a reasonable time limit for its ratification and may also choose between the two methods of ratification recognized by this Article. *Rhode Island v. Palmer*, 253 U. S. 350; *Hollingsworth v. Virginia*, 3 Dall. 378; *United States v. Sprague*, 282 U. S. 716.

#### ARTICLE VI. MISCELLANEOUS PROVISIONS

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties, made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

#### ARTICLE VII. RATIFICATION

The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

### AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

The first ten amendments were proposed by Congress on September 25, 1789, and were declared ratified in 1791.

They are not intended to limit the powers of the state governments in respect to their own people, but to protect only against invasion of civil liberties by the federal government whose conduct they alone limit. Conversely, a state cannot by operating within its constitutional powers restrict the operations of the federal government; for, although the powers of both exist and are exercised within the same territorial limits, they are nevertheless separate and distinct, acting separately and independently of each other, within the respective spheres of each sovereignty. *Barron v. Baltimore*, 7 Pet. 243; *Spies v. Illinois*, 123 United States 131; *Feldman v. United States*, 322 U. S. 487.

#### AMENDMENT I. RELIGION, FREE SPEECH, ETC.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

#### AMENDMENT II. BEARING ARMS

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

#### AMENDMENT III. QUARTERING SOLDIERS

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

#### AMENDMENT IV. SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

#### AMENDMENT V. RIGHTS OF PERSONS

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

It has been held by the Supreme Court of the United States that the word "liberty" as used in this amendment "is not confined to mere freedom from bodily restraint," but "under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. . . Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause." *Bolling v. Sharpe*, — U. S. —, decided May 17, 1954. See also notes to Amendment XIV.

#### AMENDMENT VI. RIGHTS OF ACCUSED

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

#### AMENDMENT VII. CIVIL TRIALS

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

#### AMENDMENT VIII. PUNISHMENT FOR CRIME

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.



### AMENDMENT IX. RIGHTS RETAINED BY THE PEOPLE

The enumeration, in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

### AMENDMENT X. RESERVED STATE POWERS

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

### AMENDMENT XI. SUITS AGAINST STATES

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Submitted by Congress on September 5, 1794, and declared adopted on January 8, 1798. It has been said that the action of the Supreme Court in accepting jurisdiction of a suit against a State by a citizen of another State in 1793, in *Chisholm v. Georgia*, 2 Dall. 419, provoked such angry reactions in Georgia and such anxieties in other States that at the first meeting of Congress after this decision what became the Eleventh Amendment was proposed by an overwhelming vote and ratified with "vehement speed." Dissenting opinion in *Larson v. Domestic and Foreign Corp.*, 337 U. S. 682.

### AMENDMENT XII. ELECTION OF PRESIDENT

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.

The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Submitted by Congress on December 12, 1803 and declared in force on September 25, 1804. See notes to Article II, Sec. 1, cl. 1.

### AMENDMENT XIII. SLAVERY AND INVOLUNTARY SERVITUDE

**Section 1.** Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Sec. 2.** Congress shall have power to enforce this article by appropriate legislation.

Submitted by Congress on February 1, 1865; declared in force December 18, 1865.

### AMENDMENT XIV. RIGHTS OF CITIZENS

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This section has come to be the most important restriction of the States in the Constitution.

Recently it has been held by the Supreme Court of the United States that in the field of education segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities in violation of the equal protection clause of this section. *Brown v. Board of Education*, — U. S. —, decided May 17, 1954. See also notes to Amendment V; *Beal v. Holcombe*, 193 F(2d) 384; *Banks v. Housing Authority of San Francisco*, 22 U. S. Law Week 2138.

**Sec. 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime,

the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Submitted by Congress on June 16, 1866; declared in force July 28, 1868.

#### AMENDMENT XV. RIGHTS OF CITIZENS TO VOTE

Section 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State, on account of race, color, or previous condition of servitude.

Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.

Submitted by Congress on February 17, 1869; declared in force March 30, 1870.

#### AMENDMENT XVI. INCOME TAX

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Submitted by Congress on July 12, 1909; declared in force February 25, 1913.

#### AMENDMENT XVII. POPULAR ELECTION OF SENATORS

Section 1. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous



branch of the State Legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the Legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the Legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the constitution.

Submitted by Congress on May 16, 1912; declared in force May 31, 1913.

Such vacancies are filled pursuant to Acts 1945, ch. 208 as amended; Burns 29-4001—29-4003.

#### [AMENDMENT XVIII. PROHIBITION OF INTOXICATING LIQUORS

**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

**Sec. 2.** The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

**Sec. 3.** This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]

Submitted by Congress on December 17, 1917; declared in force January 29, 1919. Repealed by Amendment XXI.

#### AMENDMENT XIX. EQUAL SUFFRAGE

**Section 1.** The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

**Sec. 2.** Congress shall have power to enforce this article by appropriate legislation.

Submitted by Congress on June 5, 1919; declared in force August 26, 1920.

#### AMENDMENT XX. TERMS OF OFFICE

**Section 1.** The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

**Sec. 2.** The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

Sec. 3. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

See note to Article 2, Sec. 1, cl. 6 for law of succession.

Sec. 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

Sec. 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Sec. 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the Legislatures of three-fourths of the several States within seven years from the date of its submission.

Submitted by Congress on March 3, 1932; declared in force February 6, 1933.

## AMENDMENT XXI. NATIONAL LIQUOR PROHIBITION REPEAL

Section 1. The Eighteenth Article of Amendment to the Constitution of the United States is hereby repealed.

Sec. 2. The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Sec. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the States by Congress.

Submitted by Congress on February 20, 1933; declared in force December 5, 1933.

## AMENDMENT XXII. PRESIDENTIAL TENURE

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Sec. 2. This Article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress.

Proposed by Congress on March 24, 1947; declared ratified on March 1, 1951.